People Realty Sdn Bhd v Hong Leong Bank Bhd & Anor

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B–02–517 OF 2006
MOKHTAR SIDIN, LOW HOP BING AND RAUS SHARIF JJCA
13 SEPTEMBER 2007

Land Law — Sale of land — Public auction — Objections against reserve price fixed — Whether necessary to submit own valuation report if challenging valuation of other party

Land Law — Sale of land — Public auction — Whether order for directions and sale by auction may be challenged after certificate of sale issued — Whether such challenge may affect indefeasibility of title of purchaser over said land

The appellant executed a National Land Code charge ('the charge') in favour of the Hong Leong Bank Bhd ('first respondent'). The charge was created over two lots of land owned by the appellant namely Lot No s 5808 and 5809, CT No s 20462 and 20463, Mukim Petaling, Daerah Kuala Lumpur ('the said land'). The charge was to secure the repayment of banking facilities granted by the first respondent to the appellant. The first respondent filed an originating summons applying, inter alia, for an order for sale of the said land. The order for sale was granted by the High Court. Pursuant to a summons for directions filed by the first respondent, the senior assistant registrar ('SAR') issued an order directing that the sale of the said land was to be by way by public auction and fixed the reserve price at RM6.2m. The second respondent attended the auction and succeeded in bidding for the said land at the reserve price. A deposit of RM620,000 was paid. The balance of purchase price was settled within the time limit fixed. A certificate of sale (Form 16F of National Land Code) was issued by the High Court. However, the said certificate of sale could not be presented for registration at the office of Registrar of Titles, Selangor, as the appellant had entered a private caveat on the said land. The second respondent applied to remove the said private caveat and this was allowed by the High Court. Pursuant thereto, the said land was duly registered in the name of the second respondent as the registered owner. The second respondent had since then commenced their respective works to develop the said land, inter alia, as a housing project. In the High Court, the appellant applied to set aside the auction sale. The appellant also appealed to the judge in chambers on the decision of the SAR on the reserve price fixed. Both the application and the appeal were dismissed by the judicial commissioner in the High Court.

Held, dismissing the appeal:

(1) The main complaint by the appellant in this appeal was the reliance by the SAR on the valuation report tendered by the first respondent, as the basis of

fixing the reserve price for the said land. According to the appellant, the valuation report contained serious and unacceptable inconsistencies and should not have been accepted by the SAR. Thus, it was contended by the appellant that the sale was not done at a fair market value. Since the appellant was challenging the valuation of the said land, it was necessary for the appellant to submit its own valuation report to counter the valuation report tendered by the first respondent. However, in this case, the appellant had not produced any valuation report to show that the market value of the said land was more than RM6.2m (see paras 7–8).

(2) In the absence of any affidavit evidence and a valuation report challenging the valuation report submitted by the first respondent, it is not open to the appellant now to challenge the derivation of the reserve price (see para 9).

(3) There was no dispute that the High Court had issued the certificate of sale to the second respondent. Thus, the disputes by the appellant against the first respondent in respect of the order for directions and the auction sale should not affect the indefeasibility of title of the second respondent over the said land (see para 12).

[Bahasa Malaysia summary

Perayu telah memasuki satu gadaian Kanun Tanah Negara ('gadaian tersebut') bagi pihak Hong Leong Bank Bhd ('responden pertama'). Gadaian tersebut telah dimasukkan untuk dua lot tanah yang dimiliki oleh perayu iaitu Lot No s 5808 dan 5809, CT No s 20462 dan 20463, Mukim Petaling, Daerah Kuala Lumpur ('tanah tersebut'). Gadaian tersebut adalah untuk menjamin bayaran balik kemudahan perbankan yang diberikan oleh responden pertama kepada perayu. Responden pertama telah memfailkan satu saman pemula memohon, antara lain, untuk satu perintah jualan tanah tersebut. Perintah jualan tersebut telah dibenarkan oleh Mahkamah Tinggi. Menurut satu saman untuk arahan yang telah difailkan oleh responden pertama, penolong kanan pendaftar ('PKP') telah mengeluarkan satu perintah mengarahkan bahawa jualan tanah tersebut adalah melalui lelongan awan dan telah menetapkan harga rizab pada RM6.2j. Responden kedua telah menghadiri lelongan tersebut dan berjaya membuat bidaan untuk tanah tersebut pada harga rizab. Deposit sejumlah RM620,000 telah dibayar. Baki harga belian telah diselesaikan dalam tempoh masa yang ditetapkan. Satu sijil jualan (Borang 16F Kanun Tanah Negara) yang dikeluarkan oleh Mahkamah Tinggi. Namun, sijil jualan tersebut tidak dapat dikemukakan untuk pendaftaran di pejabat Pendaftar Hak Milik, Selangor, kerana perayu telah memasukkan kaveat persendirian ke atas tanah tersebut. Responden kedua memohon untuk membatalkan kaveat persendirian tersebut dan ini telah dibenarkan oleh Mahkamah Tinggi. Berikutan itu, tanah tersebut telah didaftarkan atas nama responden kedua sebagai pemilik berdaftar. Responden kedua telahpun memulakan kerja-kerja mereka untuk memajukan tanah tersebut, antara lain, sebagai satu projek perumahan. Di Mahkamah Tinggi, perayu memohon untuk mengenepikan jualan lelongan itu. Perayu juga telah merayu kepada hakim dalam kamar mengenai keputusan PKP berhubung harga rizab yang ditetapkan. Kedua-dua permohonan dan rayuan tersebut telah ditolak oleh pesuruhjaya kehakiman di Mahkamah Tinggi.

Diputuskan, menolak rayuan tersebut:

(1) Aduan utama oleh perayu dalam rayuan ini adalah berhubung PKP yang bergantung kepada laporan penilaian yang telah dikemukakan oleh responden pertama, sebagai asas untuk menetapkan harga rizab untuk tanah tersebut. Menurut perayu, laporan penilaian itu mengandungi perkara-perkara yang tidak konsisten yang serius dan tidak boleh diterima dan tidak sepatutnya diterima oleh PKP. Oleh itu, is telah ditegaskan oleh perayu bahawa jualan tersebut tidak dilaksanakan mengikut nilai pasaran yang adil. Memandangkan perayu mencabar penilaian tanah tersebut, adalah perlu untuk perayu mengemukakannya laporan penilaiannya sendiri untuk menentang laporan penilaian yang ditenderkan oleh responden pertama. Namun, dalam kes ini, perayu tidak mengemukakan apa-apa laporan penilaian untuk menunjukkan bahawa nilai pasaran tanah tersebut adalah lebih daripada RM6.2j (lihat perenggan 7–8).

(2) Dengan ketiadaan apa-apa afidavit keterangan dan laporan penilaian yang mencabar laporan penilaian yang dikemukakan oleh responden pertama, ia tidak terbuka untuk perayu kini mencabar bagaimana harga rizab tersebut diperoleh (lihat perenggan 9).

(3) Tiada pertikaian bahawa Mahkamah Tinggi telah mengeluarkan sijil jualan tanah tersebut kepada responden kedua. Oleh itu, pertikaian-pertikaian oleh perayu terhadap responden pertama berkaitan perintah untuk arahan dan jualan lelongan tersebut tidak sepatutnya menjejaskan hak milik yang tidak boleh disangkal responden kedua ke atas tanah tersebut (lihat perenggan 12).]

Notes

For cases on public auction, see 8(2) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 4258–4261.

Case referred to

Bank Kerjasama Rakyat Malaysia v Daya Plaza Sdn Bhd, Empire Possession Sdn Bhd (Intervener) [1998] 5 CLJ 79 (refd)

Legislation referred to

National Land Code s 267(1), Form 16F

K Shanmuga (Kanesalingam & Co) for the appellant.
Andrew Chiew Ean Vooi (Lee Hishammuddin Allen & Gledhill) for the respondent.

Raus Sharif JCA (delivering judgment of the court):

[1] This is an appeal by the appellant against two decisions of the learned Judicial Commissioner Shah Alam, made on 21 April 2006, namely:

(a) dismissal of the appellant's application to set aside the auction sale dated 12 May 2003 (first decision); and

(b) dismissal of the appellant's appeal to the judge in chambers on the reserve price fixed by the senior assistant registrar on 2 December 2002 (second decision).

[2] On 20 June 2007 we heard and dismissed the appeal. We now give our reasons. First, the relevant facts. A

[3] On 19 October 1995 the appellant executed a National Land Code charge ('the charge') in favour of the Hong Leong Bank Bhd. ('first respondent'). The charge was created over two lots of land owned by the appellant namely Lot No s 5808 and 5809, CT No s 20462 and 20463, Mukim Petaling, Daerah Kuala Lumpur ("the said land"). The charge was to secure the repayment of banking facilities granted by the first respondent to the appellant. B

[4] On 26 March 1999 the first respondent filed an originating summons in Shah Alam High Court, applying inter alia for an order for sale of the said land. An order for sale of the said land was granted by the High Court on 29 June 2001. Pursuant to the Summon For Directions dated 15 April 2002 filed by the first respondent, the senior assistant registrar ('SAR') issued an order directing that the sale of the said land is to be by way by public auction and fixed the reserve price at RM6.2m. C D

[5] The second respondent attended the auction sale at Shah Alam High Court on 12 May 2003 and succeeded in bidding the said land at the reserve price of RM6.2m. A deposit of RM620,000 was paid. The balance of purchase price was settled on 7 August 2003, within the time limit fixed. E

[6] On 19 February 2003 a certificate of sale (Form 16F of the National Land Code) was issued by the Shah Alam High Court. However, the said certificate of sale could not be presented for registration at the office of Registrar of Titles, Selangor, as the appellant has entered a private caveat on the said land. The second respondent applied to remove the said private caveat and this was allowed by the Shah Alam High Court on 21 June 2004. Pursuant thereto, the said land was duly registered in the name of the second respondent as the registered owner. The second respondent has since then commenced their respective works to develop the said land, inter alia, as a housing project. F G

[7] The main complaint by the appellant in this appeal is the reliance by the SAR on the valuation report dated 20 September 2001 tendered by the first respondent, as the basis of fixing the reserve price for the said land. According to the appellant, the valuation report contains serious and unacceptable inconsistencies and should not have been accepted by the SAR. Thus, it is contended by the appellant that the sale was not done at a fair market value. H

[8] With utmost respect, we are unable to subscribe the appellant's argument. To us, since the appellant is challenging the valuation of the said land, it is necessary for the appellant to submit its own valuation report to counter the valuation report tendered by the first respondent. However, in this case, the appellant has not produced any valuation report to show that the market value of the said land was more than RM6.2m. In *Bank Kerjasama Rakyat Malaysia v Daya Plaza Sdn Bhd, Empire Possession Sdn Bhd (Intervener)* [1998] 5 CLJ 79 Arifin Zakaria J (now FCJ) held at p 85 that: I

> What is even more fatal to the defendant's case is that even assuming for the sake of argument that there was a breach of duty of care by the plaintiff in the conduct of the auction of the said lands, the burden is on the defendant to prove that the defendant has suffered damage as the result thereof. This means to say that the defendant has to satisfy the court, on the balance of probabilities the said land has been sold at a price below the market value. Since the issue involves the valuation of the said lands, therefore, it is necessary for the defendant to submit its own valuation report to challenge the valuation report submitted by the plaintiff. In the circumstances, the court is left with no alternative but to accept the valuation report submitted by the plaintiff.

[9] Similarly in the present case the appellant failed to produce its own valuation. In fact the first defendant did not file in any affidavit to challenge the plaintiff's application to fix the reserve price at RM6.2m. Thus, in the absence of any affidavit evidence and the valuation report challenging the valuation report submitted by the first respondent, it is not open to the appellant now to challenge the derivation of the reserve price. In any event, it is our respectful view that the valuation report tendered by the first respondent had shown that the valuer has used the proper methods in determining the market value of the said land.

[10] The challenge made on the order for sale was also mounted on the grounds that the first respondent had failed to comply with the directions in the order of the SAR dated 2 December 2002 namely:

(i) the proclamation of sale was not advertised in the newspaper in Bahasa Malaysia;

(ii) the proclamation of sale was not served on the appellant;

(iii) short service of the order of sale; and

(iv) the sale was fixed more than one and a half years after the reserved price was fixed.

[11] However, we are of the view that such challenges are of no consequence to the order for sale. This is because the title or interest of the appellant, as the chargor of the said land had been passed to and vested with the second respondent, as the purchaser of the said land, by virtue of s 267(1) of the NLC. The section reads:

> s 267(1) Any certificate of sale given to a purchaser under subsection 3 of section 259 or subsection (4) of section 265 in respect of any charged land or lease shall be treated for all the purposes of this Act as an instrument of dealing, and shall be registered accordingly under Part Eighteen; and, upon the registration thereof —
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> (a) the title or interest of the chargor shall pass to and vest in the purchaser, freed and discharged from all liability under the charge in question and any charge thereto; and
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> (b) subject to paragraph (b), and subsection (2) the relevant provisions of Part Fourteen shall apply as if the chargor had transferred the land or lease to the purchaser in accordance with the provisions of that Part.

[12] In this case there is no dispute that the Shah Alam High Court had issued the certificate of sale to the second respondent and the said land was thereafter duly registered in the name of the second respondent. Thus, the disputes by the appellant

against the first respondent in respect of the order for directions and the auction sale shall not affect the indefeasibility of title of the second respondent over the said land. This is fortified by the fact that the appellant had failed to show that the value of the sale was such an undervalue as to indicate fraud or want of proper standard of care. Thus, on the facts of this case the learned judicial commissioner had rightly decided that the second respondent was a bona fide purchaser for value and therefore has an indefeasible title to the said land.

[13] For the above said reasons, we unanimously dismissed the appeal with half costs to the respondents.

Appeal dismissed.

Reported by Brendan Navin Siva